

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CAVE MAN KITCHENS INC.,

Plaintiff,

v.

CAVEMAN FOODS, LLC,

Defendant.

Case No. 2:18-cv-01274 TSZ

STIPULATED PROTECTIVE ORDER

CAVEMAN FOODS, LLC,

Counterclaimant,

v.

CAVE MAN KITCHENS INC.,

Counterdefendant.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential

1 treatment under the applicable legal principles, and it does not presumptively entitle parties to file
2 confidential information under seal.

3 2. “CONFIDENTIAL” AND “HIGHLY CONFIDENTIAL” MATERIAL

4 “Confidential” material shall include the following documents and tangible things
5 produced or otherwise exchanged: information (regardless of how it is generated, stored or
6 maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure
7 26(c), including confidential business or financial information, information regarding confidential
8 business practices, or other confidential research, development, or commercial information
9 (including information implicating privacy rights of third parties), and other information otherwise
10 generally unavailable to the public, or which may be privileged or otherwise protected from
11 disclosure under state or federal statutes, court rules, case decisions, or common law.

12 “Highly confidential” or “Attorney’s Eyes Only” material shall include the following
13 documents and tangible things produced or otherwise exchanged: extremely sensitive
14 “Confidential” information (regardless of how it is generated, stored or maintained) or tangible
15 things, the disclosures of which to another Party or Non-Party would create a substantial risk of
16 serious harm that could not be avoided by less restrictive means, such as trade secrets or other
17 highly sensitive research, development, production, personnel, commercial, market, financial, or
18 business information, such as information regarding a business’s strategic plans for future growth.

19 3. SCOPE

20 The protections conferred by this agreement cover not only confidential and highly
21 confidential material (as defined above), but also (1) any information copied or extracted from
22 confidential or highly confidential material; (2) all copies, excerpts, summaries, or compilations of
23 confidential or highly confidential material; and (3) any testimony, conversations, or presentations
24 by parties or their counsel that might reveal confidential or highly confidential material.

25 However, the protections conferred by this agreement do not cover information that is in
26 the public domain or becomes part of the public domain through trial or otherwise.

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential or highly confidential
3 material that is disclosed or produced by another party or by a non-party in connection with this
4 case only for prosecuting, defending, or attempting to settle this litigation. Confidential or highly
5 confidential material may be disclosed only to the categories of persons and under the conditions
6 described in this agreement. Confidential or highly confidential material must be stored and
7 maintained by a receiving party at a location and in a secure manner that ensures that access is
8 limited to the persons authorized under this agreement.

9 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
10 by the court or permitted in writing by the designating party, a receiving party may disclose any
11 confidential material only to:

12 (a) the receiving party’s counsel of record in this action, as well as employees
13 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

14 (b) the officers, directors, and employees (including in house counsel) of the
15 receiving party to whom disclosure is reasonably necessary for this litigation;

16 (c) experts and consultants to whom disclosure is reasonably necessary for this
17 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (d) the court, court personnel, and court reporters and their staff;

19 (e) private court reporters and their staff to whom disclosure is reasonably
20 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be
21 Bound” (Exhibit A);

22 (f) copy or imaging services retained by counsel to assist in the duplication of
23 confidential material, provided that counsel for the party retaining the copy or imaging service
24 instructs the service not to disclose any confidential material to third parties and to immediately
25 return all originals and copies of any confidential material;

26 (g) during their depositions, witnesses in the action to whom disclosure is
27 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
28 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of

transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(h) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(i) any mediator(s) or settlement officer(s) and their supporting personnel, mutually agreed upon by the parties engaged in settlement discussions..

4.3 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any Highly Confidential material only to:

(a) the receiving party’s counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the court, court personnel, and court reporters and their staff;

(d) copy or imaging services retained by counsel to assist in the duplication of confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any confidential material to third parties and to immediately return all originals and copies of any confidential material;

(e) private court reporters and their staff to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(g) any mediator(s) or settlement officer(s) and their supporting personnel, mutually agreed upon by the parties engaged in settlement discussions.

For the avoidance of doubt, disclosure of information or items designated “Highly Confidential” or “Attorney’s Eyes Only” may not be disclosed to any person or entity who, on and

1 after the date this Action began, is or was one of the following: named plaintiff or defendant to
2 this Action, including all of their officers, directors, or employees, except as provided in Section
3 4.3, subsection (f), above.

4 4.4 Filing Confidential Material. Before filing confidential or highly confidential
5 material, or discussing or referencing such material in court filings, the filing party shall confer
6 with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether
7 the designating party will remove the confidential designation, whether the document can be
8 redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the
9 meet and confer process, the designating party must identify the basis for sealing the specific
10 confidential information at issue, and the filing party shall include this basis in its motion to seal,
11 along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the
12 procedures that must be followed and the standards that will be applied when a party seeks
13 permission from the court to file material under seal. A party who seeks to maintain the
14 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),
15 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in
16 the motion to seal being denied, in accordance with the strong presumption of public access to the
17 Court's files.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
20 or non-party that designates information or items for protection under this agreement must take
21 care to limit any such designation to specific material that qualifies under the appropriate
22 standards. The designating party must designate for protection only those parts of material,
23 documents, items, or oral or written communications that qualify, so that other portions of the
24 material, documents, items, or communications for which protection is not warranted are not
25 swept unjustifiably within the ambit of this agreement.

26 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
27 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
28 unnecessarily encumber or delay the case development process or to impose unnecessary expenses

1 and burdens on other parties) expose the designating party to sanctions.

2 If it comes to a designating party's attention that information or items that it designated for
3 protection do not qualify for protection, the designating party must promptly notify all other
4 parties that it is withdrawing the mistaken designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in this
6 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
7 ordered, disclosure or discovery material that qualifies for protection under this agreement must be
8 clearly so designated as either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" before or
9 when the material is disclosed or produced.

10 (a) Information in documentary form: (e.g., paper or electronic documents and
11 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
12 the designating party must affix the word "CONFIDENTIAL" or the phrase "HIGHLY
13 CONFIDENTIAL – ATTORNEY'S EYES ONLY" to each page that contains confidential or
14 highly confidential material. If only a portion or portions of the material on a page qualifies for
15 protection, the producing party also must clearly identify the protected portion(s) (e.g., by making
16 appropriate markings in the margins). A party or non-party that makes original documents
17 available for inspection will designate them for protection within ten (10) business days after the
18 inspecting party has indicated which documents it would like copied and produced. During the
19 inspection and before the designation, all of the material made available for inspection shall be
20 provisionally deemed "CONFIDENTIAL." After the inspecting party has identified the
21 documents it wants copied and produced, the producing party or non-party must determine which
22 documents, or portion(s) thereof, qualify for protection under this Order, and must affix the word
23 "CONFIDENTIAL" or the phrase "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY"
24 to each page that contains Protected Material. If only a portion of the material on a page qualifies
25 for protection, the producing party or non-party also must clearly identify the protected portion(s)
26 (e.g., by making appropriate markings in the margins).

27 (b) Testimony given in deposition or in other pretrial proceedings: the parties
28 and any participating non-parties must identify on the record, during the deposition or other

1 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
 2 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
 3 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
 4 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
 5 confidential information at trial, the issue should be addressed during the pre-trial conference.

6 (c) Other tangible items: the producing party must affix in a prominent place on
 7 the exterior of the container or containers in which the information or item is stored the word
 8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY.” If only a
 9 portion or portions of the information or item warrant protection, the producing party, to the extent
 10 practicable, shall identify the protected portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 12 designate qualified information or items does not, standing alone, waive the designating party’s
 13 right to secure protection under this agreement for such material. Upon timely correction of a
 14 designation, the receiving party must make reasonable efforts to ensure that the material is treated
 15 in accordance with the provisions of this agreement.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
 18 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
 19 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 20 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
 21 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 22 original designation is disclosed.

23 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 24 regarding confidential designations without court involvement. Any motion regarding confidential
 25 designations or for a protective order must include a certification, in the motion or in a declaration
 26 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
 27 affected parties in an effort to resolve the dispute without court action. The certification must list
 28 the date, manner, and participants to the conference. A good faith effort to confer requires a face-

1 to-face meeting or a telephone conference.

2 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
3 intervention, the designating party may file and serve a motion to retain confidentiality under
4 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
5 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
6 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
7 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
8 the material in question as confidential until the court rules on the challenge.

9 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
10 LITIGATION

11 If a party is served with a subpoena or a court order issued in other litigation that compels
12 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
13 “HIGHLY CONFIDENTIAL,” that party must:

14 (a) promptly notify the designating party in writing and include a copy of the
15 subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena or order to
17 issue in the other litigation that some or all of the material covered by the subpoena or order is
18 subject to this agreement. Such notification shall include a copy of this agreement; and

19 (c) cooperate with respect to all reasonable procedures sought to be pursued by
20 the designating party whose confidential material may be affected.

21 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
23 material to any person or in any circumstance not authorized under this agreement, the receiving
24 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
25 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
26 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
27 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
28 Bound” that is attached hereto as Exhibit A.

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
2 MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
6 is not intended to modify whatever procedure may be established in an e-discovery order or
7 agreement that provides for production without prior privilege review. The parties agree to the
8 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

9 10. NON TERMINATION AND RETURN OF DOCUMENTS

10 Within 60 days after the termination of this action, including all appeals, each receiving
11 party must return all confidential material to the producing party, including all copies, extracts and
12 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

13 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
14 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
15 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
16 work product, even if such materials contain confidential material.

17 The confidentiality obligations imposed by this agreement shall remain in effect until a
18 designating party agrees otherwise in writing or a court orders otherwise.

19
20 //

21
22 //

23
24 //

25
26 //

27
28 //

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Presented by:

3 Dated: July 9, 2020

RUTAN & TUCKER, LLP

5 By: /s/ Meredith L. Williams

6 Meredith L. Williams
7 Attorney for Defendant/Counterclaimant
Caveman Foods LLC

8 Dated: July 9, 2020

MANN LAW GROUP

9 By: /s/ Philip P. Mann

10 Philip P. Mann
11 Attorney for Plaintiff/Counterdefendant
Cave Man Kitchens Inc.

12 Dated: July 9, 2020

NEWMAN DU WORS DURRANCE

13 By: /s/ Nate Durrance

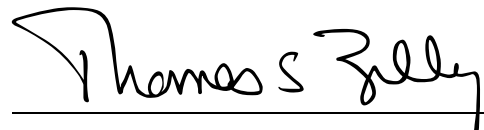
14 Nate Durrance
15 Attorney for Plaintiff/Counterdefendant
16 Cave Man Kitchens Inc..

17 **ORDER**

18 PURSUANT TO STIPULATION, IT IS SO ORDERED

19 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
20 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
21 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
22 documents, including the attorney-client privilege, attorney work-product protection, or any other
23 privilege or protection recognized by law.

24 Dated this 22nd day of July, 2020.

25 
26

27 Thomas S. Zilly
28 United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the Western District of Washington
on _____, 2020 in the case of *Cave Man Kitchens Inc. v. Caveman Foods, LLC*,
Case No. 2:18-cv-01274-TSZ. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____